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No. 01-729

IN THE SUPREME COURT OF THE UNITED STATES

GLENN G. GODFREY AND BRUCE M. BOTELHO,
Petitioners

V.

JOHN DOE I, ET AL.,
Respondents

On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit

BRIEF OF THE MASSACHUSETTS COMMITTEE FOR PUBLIC COUNSEL SERVICES AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Does the Alaska Sex Offender Registration Act violate the prohibition against *ex post facto* laws set forth in Article I, §10 of the United States Constitution?

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INTEREST OF THE MASSACHUSETTS COMMITTEE FOR PUBLIC COUNSEL SERVICES.[1]

The Massachusetts Committee for Public Counsel Services (CPCS) is the Massachusetts agency charged with representing indigent parties in a variety of criminal and civil matters. CPCS is statutorily mandated to provide counsel to indigent former sex offenders who are subject to the registration and notification provisions of the Massachusetts Sex Offender Registration and Notification Act. Mass.G.L. c.6, §178C-P (2002 edition). The instant case, which raises a question concerning the constitutionality of the Alaska sex offender registration and notification act, is likely to have important ramifications for the rights and interests of Massachusetts former sex offenders subject to the Massachusetts act.

CPCS also represents indigent defendants charged with sex offenses. Sex offender registration and notification has dramatically changed the consequences of a conviction for a sex offense. This Court's opinion in the instant case is likely to have considerable impact upon the future handling and disposition of sex offense charges.

CPCS submits this *amicus* brief to challenge the validity of certain empirical claims by petitioners and its *amici* United States and Attorneys General of Forty-One States, including

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[1] Pursuant to Supreme Court Rule 37.6, counsel for the Massachusetts Committee for Public Counsel Services (CPCS) states that no part of this brief was written by counsel for any party. No person, agency, or organization other than CPCS has made a monetary contribution to the preparation and filing of this brief. All parties have consented to the appearance of CPCS as *amicus curiae* in this matter. Letters of consent have been filed with the Clerk.

claims regarding the rate of recidivism of sex offenders and the usefulness of public notification in preventing sex offender recidivism.

ARGUMENT

I. EMPIRICAL EVIDENCE DOES NOT SUPPORT THE CLAIM OF ALASKA AND ITS *AMICI CURIAE* THAT SEX OFFENDERS RELEASED FROM INCARCERATION ARE AT UNUSUALLY HIGH RISK OF COMMITTING A NEW SEX OFFENSE.

The Alaska sex offender registration act, 1994 Alaska Sess. Laws 41 (hereinafter "the act"), provides that every sex offender, regardless of whether he or she has been rehabilitated, must register with law enforcement authorities either for a period of fifteen years from the date of unconditional discharge or, in the case of two or more sex offenses, for his or her lifetime. Alaska Stat. §§12.63.020, 12.63.100. Doe v. Otte, 259 F.3d 979, 982-983 (9th Cir. 2001), *cert. granted*, 122 S. Ct. 1062 (2002). The act applies retroactively to persons, such as John Doe I and John Doe II, convicted before its enactment. 1994 Alaska Sess. Laws 41, §12(a).

Regulations implementing the act require that registration information, which includes, *inter alia,* offenders' names, home and work addresses, photographs, and description of convictions, be made available on the internet at a state-maintained web site. Alaska Stat. §12.63.010(b)(1); Alaska Admin. Code tit.13, §09.050 (2000). As a consequence, not only persons in the Does' home towns may obtain access to their registry information, but also persons elsewhere in Alaska,

in New York, Paris, Tokyo or in any location where there is internet access.

The Court of Appeals held that the Alaska act, as applied to the Does, violates the *ex post facto* clause of the United States Constitution. Doe v. Otte, supra, 259 F.3d at 995. Reviewing the act through the lens of the seven factors set forth in Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963), the Court found that the act was excessive in relation to its purpose of protecting public safety. Doe v. Otte, supra, 259 F.3d at 991-993. Broad, world-wide dissemination of registry information for all offenders, including those who have been rehabilitated, the Court concluded, is "unquestionably punitive." Id. at 993.

Alaska and its *amici* Attorneys General[2] and Solicitor General respond that world-wide dissemination of registry information, even for rehabilitated offenders, is an appropriate response to what they characterize as the dramatically high rate at which convicted sex offenders commit new sex offenses. A closer inspection of the sources they cite for this proposition regarding sex offender recidivism, however, reveals that the "once a sex offender always a sex offender" mantra is in fact a myth.

A. Approximately 2.5% of rapists are rearrested for a new rape during the three years following their release from prison.

The Bureau of Justice Statistics of the United States Department of Justice (hereinafter "BJS") has issued two

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[2] *Amici curiae* Attorneys General of Forty-One States are referred to throughout this brief as "Attorneys General." *Amicus curiae* United States is referred to "Solicitor General."

reports within the last decade addressing recidivism by rapists. The most recent of these reports, issued in 2002, indicates that the rate of rearrest of rapists for a new rape in the three years following release from prison is 2.5%.

(i) 1997 Bureau of Justice Statistics Report

In 1997, the BJS issued a report on rape and sexual assault, which included a review of recidivism statistics for persons convicted of rape.[3] BJS, Sex Offenses and Offenders (February 1997) (hereinafter "Sex Offenses" or "1997 BJS study").[4] The study followed 2,214 convicted rapists from 11 States for a period of **3 years** after their release from prison in 1983, during which time they were on probation. Sex Offenses 25-26. The BJS recorded the following results with regard to rearrest (not reconviction) of these offenders:

1. 51.5% were rearrested and charged with a new crime

2. 27.5% were rearrested and charged with a new violent crime

3. **7.7% were rearrested and charged with rape**

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[3] "Rape" and "sexual assault" are broadly defined, and include most offenses requiring registration under the Alaska statute. See BJS, Sex Offenses and Offenders (Sex Offenses) 1 n.1 (1997). The report included statistics for recidivism by rapists, but no statistics for recidivism by persons convicted of sexual assault.

[4] All BJS studies may be found at http://www.ojp.usdoj.gov/bjs.

4. 10.7% were rearrested and charged with nonsexual assault

5. 8.5% were rearrested and charged with robbery

6. 2.8% were rearrested and charged with murder

Sex Offenses 26, figure 27.

Fewer than 1 of 10 rapists was rearrested and charged with a new rape.

The rate of rearrest of rapists for a new felony is low, relative to the rearrest rate of other violent offenders. The 1997 BJS study reported that:

> ...rapists had a lower rate of re-arrest for a new felony and a lower rate of re-arrest for a violent felony than most categories of probationers with convictions for violence. While about 41% of violent probationers were re-arrested within 3 years of placement on probation for a new felony offense, an estimated 19.5% of rapists were re-arrested for a new felony within 3 years.

Sex Offenses 25-26.

Rapists were rearrested and charged with a new felony less than half as frequently as other violent offenders.

(ii) 2002 Bureau of Justice Statistics Report

A larger, and much more current,[5] study was conducted by the BJS in 2002. BJS, Recidivism of Prisoners Released in 1994 (June 2002) (hereinafter "Recidivism" or "2002 BJS study"). This study tracked recidivism rates for 272,111 former inmates for a period of 3 years following their release from prison in 1994. The persons included in the pool represented two-thirds of all persons released from prison in 15 States, and included 3,138 rapists. Recidivism 1, 8-9.

The 2002 BJS study found that rapists were rearrested for a new rape at an even lower rate than was reported in the 1997 BJS study. During the **3 years** following release from prison in 1994:

1. 46% of rapists were rearrested and charged with a new offense

2. 18.6% were rearrested and charged with a new violent offense

3. **2.5% were rearrested and charged with rape**

4. 11.2% were rearrested and charged with a drug offense

5. 8.7% were rearrested and charged with a nonsexual assault

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[5] The 2002 study collected statistics on inmates released 11 years after the inmates for whom statistics were collected in the 1997 study.

6. 14.8% were rearrested and charged with a property offense

Recidivism 9, table 10.

See also ibid. ("of the 3,138 released rapists, 78 were arrested for rape and the remaining 3,060 were either rearrested for something else or not rearrested").[6]

The Solicitor General and the Attorneys General are incorrect in asserting in their *amicus* briefs that sex offenders "are the most likely to reoffend,"[7] "have a dramatically higher recidivism rate for their crimes than any other type of violent felon," and "have an abnormally high rate of recidivism." Brief of the Solicitor General (hereinafter Br.SG) 2. The claim that

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[6] The 2002 BJS study presents data on the rates of rearrest of violent felons, in addition to rapists. Recidivism 9, table 10. Unlike the 1997 BJS study, however, it does not include a direct comparison of the rearrest rate for violent felonies of rapists with the rearrest rate for violent felonies of other violent felons. The rate of rearrest of all violent felons (including rapists) for a new violent felony is reported as 27.5%, as compared to a rate of 18.6% for rapists. Recidivism 9, table 10.

[7] In its *amicus* brief, the Solicitor General claims that sex offenders are "'the least likely to be cured'; '[]the most likely to reoffend'; and '[]prey on the most innocent members of our society.'" Br.SG 2. These sweeping conclusions are quotes from a political speech delivered by Texas State Senator Florence Shapiro at a conference on sex offender registries. See BJS, National Conf. On Sex Offender Registries 93 (April 1998). State Senator Shapiro cites no sources in support of these claims.

"[r]apists have a recidivism rate of 49.4% to 63.8%,"[8] Brief of Attorneys General (hereinafter Br.AG) 10, is strikingly at odds with the statistics set forth in the 1997 and 2002 BJS reports.

(iii) The "Odds" that a Rapist Will Reoffend

Although *amici* Solicitor General and Attorneys General both cite to the 1997 and 2002 BJS reports on recidivism by sex offenders and by criminal offenders, neither acknowledges the very low rate of recidivism for rapists reported in those studies. Instead, they make much ado over the difference between the odds that a former sex offender will commit a new rape and the odds that a former felon, not convicted of rape, will be arrested for rape. Br.AG 10.

An individual rapist released from prison is more likely than an individual nonrapist released from prison to commit a rape during the three years following his release. According to the 2002 BJS report, a rapist's odds are 4.2 times a nonrapist's odds of being rearrested for rape. Recidivism 10. The 1997 BJS study reports that the odds differ by a factor of 10.5. Sex Offenses 27.

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[8] The *amicus* brief of the Attorneys General cites as authority for this statistic J. Comparet-Cassani, *A Primer on the Civil Trial of a Sexually Violent Predator*, 37 San Diego Law Review 1057, 1072 n.80 (2000). The Comparet-Cassani article reports only general recidivism rates of sex offenders, i.e., rearrest rates of sex offenders for any new crime, and is not limited to rearrest rates for new sex offenses. The California study upon which Comparet-Cassani relies for her statistical claims in fact reports that over a 15 year follow-up period, "19.7% of [sex offenders] went on to recidivate with a subsequent sex registrable offense." R. Lewis, Effectiveness of Statutory Requirements for the Registration of Sex Offenders 7 (1988). This California study is discussed *infra* at 14-15.

This, however, does not mean that former rapists are highly likely to commit new rapes. Fewer than 3 of 100 former rapists were rearrested for rape in the three years following release from prison. Recidivism 9, table 10. The 2002 BJS study indicates that a smaller percentage of nonrapists than of rapists were rearrested and charged with rape during the three year period. It also indicates, however, that the absolute number of nonrapists arrested for rape was substantially larger than the absolute number of rapists rearrested for rape. Recidivism 9, table 10.

1. rapists arrested and charged with rape: 2.5% (number - 78)

2. drug offenders arrested and charged with rape: .3% (number - 266)

3. burglars arrested for rape: .8% (number - 330)

4. offenders against public order arrested for rape: .4% (number - 104).

Ibid.[9]

Of the 778 felons arrested for rape after release from incarceration, only 78 had a prior rape conviction.

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[9] These numbers were derived by multiplying the rate of arrests for rapes by the number of inmates released for each category of prior offense. For example, 41,257 burglars (Recidivism 9, table 10) were released from prison at the outset of the study period. The percentage arrested for rape during the following three years was .8%. Ibid. When multiplied, these two numbers indicate that 330 former burglars were arrested for rape during the three year period.

B. Most offenders against children are family members rather than prior offenders committing new crimes.

Many victims of rape and sexual assault are persons under 18 years of age. Sex Offenses iii ("44% of rape victims were under the age of 18"). Their stories of abuse are often horrific. Worldwide dissemination of the registry information of former sex offenders cannot, however, reasonably be judged an effective deterrent to future sex crimes against children.

In 2000, the BJS collected and analyzed data concerning the sexual assault of persons under 18 years of age (hereinafter "children"). BJS, Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident and Offender Characteristics (July, 2000) (hereinafter Sexual Assault of Young Children or "2000 BJS study"). The study reviewed the case files of 118,753 children who were victims of rape or sexual assault between 1991 and 1996.[10] Id. 1. Data was gathered from 12 states. Ibid. The following statistics were reported:

1. for victims under the age of 6, 49% of the perpetrators were family members

2. for victims between the ages of 6 and 11, 42% of the perpetrators were family members

3. for victims under the age of 6, 3% of the perpetrators were strangers

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[10] "Rape" and "sexual assault" are broadly defined, but exclude statutory rape. Sexual Assault of Young Children 13.

4. for victims between the ages of 6 and 11, 5% of the perpetrators were strangers

Sexual Assault of Young Children 10.

The 1997 BJS study likewise reported that in 90% of the rapes of children younger than 12, the child knew the offender. Sex Offenses iii. In 43% of these cases, the offender was a family member. Id. 11.

No recidivism statistics were available for the BJS studies, and none were included in any of the three reports. The absence of statistics on rearrest of persons convicted of sex offenses against children is a major impediment to determining their rate of recidivism.

The Solicitor General claims that those who commit sex offenses against children present an even higher risk of recidivism than sex offenders generally. Br.SG 4. The authorities cited do not support this proposition. BJS, Child Victimizers: Violent Offenders and Their Victims 9-10 (1996) (hereinafter Child Victimizers), for example, does not report recidivism statistics for child molesters, but rather addresses characteristics of violent offenders against children generally. It notes that "[o]ffenders with multiple child-victims were most likely to be serving time for robbery, aggravated assault, negligent manslaughter, or murder." Id. 9.

R. Karl Hanson et al., *Long-Term Recidivism of Child Molesters*, 61 J. of Consulting and Clinical Psychology 646 (1993), cited at Br.SG 4, n.3, studied a group of 197 Canadian child molesters released between 1958 and 1974. Id. 648. Hanson did not report statistics on the recidivism rate of child

molesters for new instances of child molestation, but only for violent offenses. Id. at 648. Even so, Hanson found that:

> 1. the rate of reconviction of child molesters for a new sexual or violent offense during the **first five years** of the study was **5.2%**
>
> 2. the rate of reconviction of child molesters for a new sexual or violent offense during **each following year** was approximatly **1.8% per year**

Id. at 648.

This means that **ten years** after release, approximately **12.9% of child molesters were convicted for either a new sexual or violent offense.**

Statistics aside, it is highly unlikely that internet disclosure of registry information will be of particular use in protecting many of these children, given the large percentage of offenders who are family members. Consulting a registry of convicted offenders will at best provide a false sense of security based on an uninformed assumption that the most likely child molesters have been included on the list.

C. Information on longer term recidivism rates is extremely limited.

Amicus Solicitor General urges that long term recidivism rates must be considered when assessing recidivism by sex offenders because sex offenders continue to reoffend

many years after release from prison. Br. SG4 n.3. This is easier said than done.

The BJS appears to have published no long-term study of recidivism by sex offenders. Two states have completed studies that track sex offense recidivism rates in their jurisdictions for more than three years after release from prison. These studies, although limited by the small number of subjects studied, are nevertheless of some interest. In addition, two Canadian researchers have published a meta-analysis[11] which, although not a long term study, is worthy of notice because of the very large number of offenders included.

(i) New Jersey

In 2002, the New Jersey Department of Corrections issued a study, which tracked 79 offenders released from the Adult Diagnostic and Treatment Center in 1990. N.J. Dept. of Correction, Report - 1990 Recidivism Study[12] (January 21, 2002)(hereinafter "New Jersey Study"). All had been found to be repetitive and compulsive sex offenders. The offenders were tracked for a period of **ten years**. The following results were reported.

> 1. 26.5% were reconvicted for nonsexual offenses

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[11] A meta-analysis is a study which collects and analyzes statistics reported in other studies.

[12] This study in included in materials lodged by the New Jersey Public Defender et al. along with its *amicus* brief in support of respondents.

2. **3.8% were reconvicted for sexual offenses**

New Jersey Study 3.

One of the three reconvictions for a sexual offense occurred during the first five years after release, and two more during the second five year period. Id. 5.

(ii) California

In 1988, the California Department of Justice issued a report on the effectiveness of its sex offender registration statute. The report included recidivism statistics for a group of 1,362 sex offenders released in 1973 and tracked for a period of **15 years**. Lewis, R., Effectiveness of Statutory Requirements for the Registration of Sex Offenders (1988) (hereinafter "California Study")[13] 1, 7. The following results were reported.

1. **19.7% of sex offenders were arrested for a new sex offense[14]**

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[13] This study may be found on the internet at http://caag.state.ca.us/cjsc.

[14] The higher rates found in California as compared to New Jersey may reflect not only the five-year difference in the follow-up period, but may also reflect the fact that the New Jersey offenders received sex offender treatment while incarcerated. See McKune v. Lile, 2002 U.S. LEXIS 4206, *19 (2002) ("[t]herapists and correctional officers widely agree that clinical rehabilitative programs can enable sex offenders to manage their impulses and in this way reduce recidivism"). It is also significant that the California study reports rates of rearrest as opposed to reconviction, and that the California study was conducted twelve years before the New Jersey study.

2. although the percent of nonsexual offenders arrested for a sex offense was lower than 19.7%, the actual number of violent offenders, of property offenders and of each other category of nonsexual offenders (excluding drug offenders) arrested for a sex offense was significantly higher than the actual number of sex offenders arrested for a sex offense[15]

California Study 8, table 2.

(iii) Hanson and Bussiere Meta-Analysis

In 1998, two Canadian researchers published a meta-analysis of numerous previously published studies, addressing the recidivism rates of sex offenders. R.K. Hanson and M. Bussiere, *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*, 66 Journal of Consulting and Clinical Psychology 348 (1998) [hereinafter "the meta-analysis"]. Hanson and Bussiere gathered information from 61 studies of sex offender recidivism, which cumulatively reported recidivism statistics for **28,972** sex offenders. Id. at 349-351.

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[15] The actual number of offenders is derived by multiplying the rate of arrests for sex offenses by the number of persons released for each category of offense. For example, former property offenders were arrested for a sex offense at the rate of arrest 2.7%. California Study 8, table 2. The number of property offenders released in 1973 was 22,417. Ibid. When multiplied, these two numbers indicate that 605 property offenders were arrested for sex crimes during the 15 year study.

The studies surveyed were conducted in six North American and European countries, as well as Australia. Thirty studies were of American sex offenders. Ibid. Adult and adolescent offenders, and offenders against children and adults, were included. Ibid. Recidivism was measured by reconvictions, arrests, self-reports and parole violations for a new sex offense. Ibid.

The meta-analysis found that the recidivism rate of sex offenders for new sex offenses in the **4 to 5** years following release from incarceration was **13.4%**. Although the follow-up period was not lengthy, the meta-analysis is of particular interest because of the large number of sex offenders it encompassed.

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Many researchers on sex offender recidivism have noted substantial inconsistencies among studies, both as to rates of recidivism and as to factors that predict recidivism. Center for Sex Offender Management,[16] Recidivism of Sex Offenders 7 (May 2001). B. Schwartz and H. Cellini, *Sex Offender Recidivism and Risk Factors in the Involuntary Commitment Process*, in Schwartz, ed., The Sex Offender: Theoretical Advances, Treating Special Populations and Legal Developments III 8-4 (1999). Some of the variation has been attributed to differences in the quality of the studies. Schwartz and Cellini 8-4 (recidivism studies differ widely in the quality of the research design, including criteria for success or failure, presence of control group, length of follow-up time, and correctness of statistics used in analyzing time at risk).

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[16] Publications of the Center for Sex Offender Management may be found at www.csom.org.

A second important factor, however, is the pool of offenders studied.

> One possible reason for the amount of disagreement in these studies is that they may use a heterogeneous group of sex offenders in their analysis. Mixing an antisocial rapist with a socially skilled fixated pedophile with a developmentally disabled exhibitionist may indeed produce a hodgepodge of results.

Schwartz and Cellini 8-6.

Alaska has made no attempt to distinguish subgroups of sex offenders or individual sex offenders who may be at much lower risk of reoffending from other subgroups or individuals who pose a higher risk. It has instead opted for the "hodgepodge" approach, with the result that even incontrovertibly rehabilitated former offenders are subject to its harsh provisions.

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The Alaska sex offender registration act is grounded on the legislative finding that "sex offenders pose a high risk of reoffending after release from custody." 1994 Alaska Sess. Laws c.41, §1. This finding is not supported by empirical evidence. The fact that the legislature has declared it to be so does not transform its "finding" into fact. "Where government must show an interest of more than the usual degree of urgency to justify imposition on the individual, the simple invocation of its legislative judgment, buttressed perhaps by a showing of a rational basis for that judgment, will not do." Doe v. Attorney General, 426 Mass. 136, 150 (1997) (Fried, J., concurring) (holding that Massachusetts sex offenders have state

constitutionally protected liberty and privacy rights in avoiding registration and dissemination and are entitled to due process prior to encumbering those rights). Because of the importance of the interests of sex offenders in avoiding the highly damaging consequences of public dissemination of registry information, actual empirical evidence that sex offenders pose a high[17] risk of reoffending by committing a new sex offense is required.

II. EMPIRICAL EVIDENCE SUGGESTS THAT DISSEMINATION OF SEX OFFENDER REGISTRY INFORMATION MAY UNDERMINE PUBLIC SAFETY.

The Alaska sex offender registration and notification act was also premised on a finding that "release of certain information about sex offenders to public agencies and the general public will assist in protecting the public safety." 1994 Alaska Sess. Laws 41, §1. It is far from obvious that this premise is valid. In fact, available evidence, while limited, suggests that dissemination has the opposite effect.

Without evidence that the act serves a legitimate public safety purpose, and without evidence that it is not excessive in relation to the need to protect public safety, the legislature's declaration that the act is regulatory and not punitive is suspect. Doe v. Otte, supra, 259 F.3d at 991, citing Mendoza-Martinez, supra, 372 U.S. at 169.

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[17] The Alaska act does not define what is meant by a "high" risk of reoffending.

(i) Iowa Study

In December, 2000, Iowa published a report comparing the recidivism rates of sex offenders subject to the notification law to the recidivism rates of sex offenders convicted of comparable sex crimes, but not subject to the notification law because their release date was prior to the effective date of the statute. G. Adkins, D. Huff, & P. Stageberg, The Iowa Sex Offender Registry and Recidivism (December 2000) (hereinafter Iowa Study).[18]

The notification group consisted of 233 sex offenders released from prison and placed on the registry during 1995-96. Iowa Study 2. The group not subject to notification consisted of 201 sex offenders released from prison or discharged from probation during 1995-96, who would have been required to register if the registry law had been in effect at the time of their offenses. The study followed these offenders for **4.3 years**.

During the 4.3 year follow-up period:

1. **3%** of the notification offenders were reconvicted of sex offenses

2. **3.5%** of the group not subject to notification were reconvicted of sex offenses

Iowa Study 10.

This difference in reconviction rates is not statistically significant. Iowa Study 19. Notification appears to have had no effect on recidivism by sex offenders.

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[18] This study is available on the internet at http://www.state.ia.us/government/dhr/cjjp/pdfs/SexOffenderReeport.pdf.

(ii) Washington Study

In 1995, a study was published assessing the effect of public notification of sex offender registration on sex offender recidivism in the state of Washington. D. Schram & C. Milloy, Community Notification: A Study of Offender Characteristics and Recidivism (October 1995) (hereinafter Washington Study).[19] The recidivism rate of 90 adult offenders subject to the highest level of notification was compared with the recidivism rate of 90 offenders released prior to the effective date of the law.

After **4.5 years,**

1. **19%** of the group subject to notification were rearrested for a sex offense

2. **22%** of the group not subject to notification were rearrested for a sex offense

Washington Study 3. This difference is not statistically significant. Ibid. "[T]he findings suggest that community notification had little effect on recidivism as measured by new arrests for sex offenses or other types of criminal behavior." Ibid.

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[19] This study may be found on the internet at http://www.wsipp.wa.gov/crime/pdf/chrrec.pdf.

(iii) California Study

In 1988, California published a study which, in addition to providing recidivism statistics for sex offenders, surveyed criminal justice agencies, including law enforcement, probation, parole and the district attorneys offices, concerning their views of the effectiveness of offender registration in preventing sex offender recidivism. R. Lewis, Effectiveness of Statutory Requirements for the Registration of Sex Offenders 9-10 (1988) (hereinafter California Study).[20] Researchers found that "approximately half of the respondents do not believe that the sex registration system is effective in preventing sex offenders from committing sex offenses or other crimes." (emphasis in original) California Study 10.

(iv) U.S. Department of Justice Study of Notification in Wisconsin

In December, 2000, the National Institute of Justice, an agency of the U.S. Department of Justice, issued a study of the impact of the sex offender notification law in Wisconsin. See R. Zevitz and M. Farkas, Sex Offender Community Notification: Assessing the Impact in Wisconsin (December, 2000) (hereinafter Wisconsin Study).[21] The study solicited information from many sources concerning the effectiveness of the act, including the impressions of sex offenders to whom it is applicable. Personal interviews were conducted with thirty "high risk" sex offenders.

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[20] The internet site at which this study may be found as set forth in footnote 8.

[21] This study may be found on the internet at http://www.ncjrs.org.

> All but one interviewee stated that the community notification process adversely affected their transition from prison to the outside world. Loss of employment, exclusion from residence, and the breakup of personal relationships were frequently cited consequences of expanded notification actions and ensuing detrimental publicity []. Seventy-seven percent told of being humiliated in their daily lives, ostracized by neighbors and lifetime acquaintances, and harassed or threatened by nearby residents or strangers. Although only one interviewee was on the receiving end of what might be described as vigilante action, all expressed various degrees of concern for their own safety.

Wisconsin Study 9.

The study notes that most of the thirty offenders believed that the law would not prevent sex offense recidivism, but "would have the opposite effect." Wisconsin Study at 10. "Many drew from their own embittered experience with community notification to suggest that the tremendous pressure placed on sex offenders by the public and the media would drive many of them back to prison." Ibid. See also id. 11 ("The pressure placed on many of these individuals by community notification needs to be further examined as a factor in their success or failure under community supervision").

The negative repercussions for public safety of the daily humiliation, ostracizing by friends and neighbors, and difficulty in finding housing and employment predicted by sex offenders in the Wisconsin study should not be ignored. A 1998 study of dynamic factors affecting sex offender recidivism found that

sex offenders are at the highest risk of reoffending when they "show sharp increases in dysphoric moods, particularly anger." R.K. Hanson and A. Harris, Dynamic Predictors of Sexual Recidivism 1 (1998). Inflicting a high level of stress on a daily basis through the operation of a public notification law is not a sensible approach to reducing recidivism by sex offenders.

The declaration by the Alaska Legislature that its sex offender notification act protects the public safety does not make it so. A successful approach to sex assault prevention must be guided by fact and not by fantasy.[22] Public notification is not part of the solution to sex offender recidivism.

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22 Even the most avid proponents of measures to reduce the incidence of sexual assault have called for the repeal of sex offender notification laws, on the ground that they ultimately undermine rather than serve the public safety concerns that motivated them. C. Wells and E. Motley, *Reinforcing the Myth of the Crazed Rapist: A Feminist Critique of Recent Rape Legislation*, 81 B.U. Law Rev. 127, 130-135, 192-194 (2001).

CONCLUSION

For the reasons stated above, and for the reasons set forth in the brief of petitioners John Doe I, Jane Doe and John Doe II, and in the briefs of their *amici curiae*, this Court should affirm the ruling of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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